

Before the
Federal Communications Commission
Washington, D.C. 20554

MM Docket No. 93-295

In the Matter of

Amendment of Section 73.202(b). RM-8362
Table of Allotments,
FM Broadcast Stations.
(San Clemente, California)

REPORT AND ORDER
(Proceeding Terminated)

Adopted: July 26, 1995;

Released: August 4, 1995

By the Chief, Allocations Branch:

1. We consider herein the *Notice of Proposed Rule Making*, 8 FCC Rcd 8511 (1993), issued at the directive of the Commission (see 8 FCC Rcd 3123 (1993)), proposing the deletion of Channel 285A, San Clemente, California, from the FM Table of Allotments, Section 73.202(b) of the Commission's Rules. The Commission's directive was based upon the evidence and findings presented in the context of the comparative proceeding in MM Docket No. 89-503, upholding an earlier denial of the competing applications for Channel 285A at San Clemente. Wilson FM Broadcasters, Inc. ("Mt. Wilson"), licensee of Station KKGQ(FM), Channel 286B, Los Angeles, California, filed supporting comments in response to the *Notice*. Late filed comments were filed by Steven R. Bartholomew ("Bartholomew"), to which Mt. Wilson responded.¹ Additional comments were filed by Mt. Wilson and Bartholomew.²

2. Channel 285A was allotted to San Clemente in 1985. See *San Clemente, California*, 50 FR 8226, published March 1, 1985, *recon. denied*, Mimeo No. 6821, August 13, 1986, *review denied*, 2 FCC Rcd 2514 (1987), *recon. denied*, 3 FCC Rcd 6728 (1988), *appeal dismissed sub nom. Mount Wilson FM Broadcasters, Inc. v. F.C.C.*, 884 F.2d 1462 (D.C. Cir. 1989). The history surrounding the allotment of Channel 285A to San Clemente, as well as the resultant comparative application proceeding, was set forth extensively in

the *Notice* and need not be fully repeated here. However, in order to place this proceeding in perspective, a summary of the events leading to the instant mandate to delete Channel 285A at San Clemente is appropriate. Due to spacing constraints to area stations, the only transmitter site location to accommodate Channel 285A in conformity with the minimum distance separation requirements of Section 73.207 of the Commission's Rules was located within the confines of the Camp Pendleton Marine Corps compound. Based upon the reasonable possibility that a site may be made available for broadcast use on Camp Pendleton, as represented by a military official, Channel 285A was allotted to San Clemente. However, at the application level, the U.S. Marine Corps ardently opposed the applicants' proposed sites on Camp Pendleton, stating that the construction of a commercial broadcast tower on military property to accommodate Channel 285A would not be approved. Thus, most of the applicants requested a waiver of Section 73.207 of the Commission's Rules. The Commission upheld the allotment on review, stating that because Channel 285A was correctly allotted to San Clemente based upon an accurate decision that was reasonable then, it would have been inequitable to rescind the allotment without considering the applicants' specified short-spaced sites beyond the boundaries of Camp Pendleton and their associated waiver requests. See *San Clemente, California*, 3 FCC Rcd 6728, 6729 (1988).

3. As a result of a comparative hearing, all of the applications were denied for failure to demonstrate that the public interest would be served by a waiver of their proposed short spacing deficiencies. See *On the Beach Broadcasting*, 6 FCC Rcd 5221 (1991). The Review Board upheld the conclusion that waiver of Section 73.207 of the Commission's Rules would not serve the public interest. See 7 FCC Rcd 1346 (1992). The Commission reaffirmed the decisions below that the applicants had failed to demonstrate any compelling public interest benefits to overcome critical interference considerations,³ particularly since San Clemente has local transmission service and receives over thirty reception services. See *On the Beach Broadcasting*, 8 FCC Rcd 3123 at 3127 (1993).

4. In the absence of the availability of an alternate transmitter location to accommodate Channel 285A at San Clemente consistent with the Commission's technical allotment requirements, the Commission's directive was issued to initiate this proceeding looking toward its deletion from the FM Table of Allotments. See 8 FCC Rcd 3123 (1993).

5. In supporting comments, Mt. Wilson advises that over the past thirty years, it has continually opposed consideration of Channel 285A at San Clemente, as well as its subsequent allotment.⁴ Mt. Wilson advises that Station

¹ Bartholomew's late-filed comments were not accompanied by a motion to accept. However, they have been reviewed as a discretionary matter to determine if, on the basis of the information contained therein, they are responsive to the directives set forth in the *Notice*. Our review reveals that they are not. Therefore, even if Bartholomew's comments had been timely filed, they would not have altered our order to delete Channel 285A at San Clemente in the absence of evidence that military policy against allowing a commercial transmitter to be sited on Camp Pendleton has changed, or that a fully spaced location exists beyond the boundaries of Camp Pendleton to accommodate Channel 285A. Mere speculation as to the availability of a particular site is not responsive to the terms of the *Notice*.

² In view of the disposition of Bartholomew's comments, the additional responsive comments filed herein are moot and need not be discussed.

³ Specifically, the record in MM Docket No. 89-503 established that due to the spacing deficiency attached to Channel 285A, interference would be created by Station KKGQ(FM) to 42,147 persons, representing 26.4% of the population to be served by the proposed short-spaced San Clemente station. Additionally, operation on Channel 285A from the applicants' specified site would cause interference to 330,551 persons, representing 3.4% of the population within the protected contour of Station KKGQ(FM). The degree of interference was found to be unacceptable and the applications were denied.

⁴ As stated in the *Notice*, in 1965 the Commission considered a

KKGO(FM). Channel 286B, is a super-powered, grandfathered broadcast facility that operates from an extremely high antenna site on Mt. Wilson. As its *actual* operating power is 20 times greater than would be permissible for a new Class B FM station, the interfering contour of Station KKGO operating as licensed, not only encompasses the entirety of San Clemente but extends seven kilometers beyond the boundary of the city in a southerly direction. Consequently, Mt. Wilson remarks that not only would all of San Clemente receive objectionable interference, but Station KKGO(FM) would cause interference also to 76% of the total service area which might be served by a short-spaced San Clemente station. Moreover, Mt. Wilson notes that it has previously been determined that operation on Channel 285A at San Clemente could not provide the requisite contour protection to Station KKGO(FM), pursuant to the requirements of Section 73.215(b)(2)(ii) of the Commission's Rules, based upon a maximum effective radiated power of 50 kW for its Class B facility. See 8 FCC Rcd 3125 (paras. 8-10). Accordingly, as Channel 285A at San Clemente has been found to be a technically inferior allotment, Mt. Wilson urges its deletion from the FM Table of Allotments.

6. In consideration of the above, we find that the retention of Channel 285A at San Clemente no longer serves the public interest since it may never be properly utilized, and therefore, it will be rescinded. See *Pinckneyville, Illinois*, 41 RR 2d 69 (1977). While we are reluctant to remove an opportunity for the residents of San Clemente to receive an additional local broadcast service, the deficiencies associated with Channel 285A are too immense to warrant retaining the channel in the FM Table of Allotments. Our determination is based upon the absence of a demonstration by any interested party of the existence of a fully spaced site beyond the boundaries of Camp Pendleton to accommodate Channel 285A at San Clemente consistent with the Commission's technical allotment requirements.⁵ Moreover, our finding is buttressed by the evidence adduced during the protracted history of this proceeding which unequivocally demonstrated the unavailability of any transmitter sites outside the confines of the military compound to accommodate the applicants in conformity with the minimum distance separation requirements of Section 73.207 of the Commission's Rules, as well as their failure to establish sufficiently compelling public interest benefits to justify waivers thereof. See *On the Beach, supra*. Moreover, as the record below established, the severe interference considerations attached to Channel 285A far outweigh the benefits of retaining the allotment at San Clemente.⁶

7. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and 0.283 of the Commission's Rules, IT IS ORDERED, That effective **September 18, 1995**, the FM

Table of Allotments, Section 73.202(b) of the Commission's Rules, IS AMENDED with respect to San Clemente, California, as follows:

City	Channel No.
San Clemente, California	300B

8. IT IS FURTHER ORDERED. That this proceeding IS TERMINATED.

9 For further information concerning the above, contact Nancy Joyner, Mass Media Bureau, (202) 418-2180.

FEDERAL COMMUNICATIONS COMMISSION

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau

request to allot FM Channel 285A to San Clemente. Even then, it was determined that spacing constraints would have confined a transmitter site for Channel 285A to Camp Pendleton. In recognition that a site on military property would not be made available for commercial broadcast use, the reallocation of Channel 300 from Lancaster to San Clemente was requested to provide that community with FM broadcast service. Since Channel 285A could not be utilized from a fully-spaced site on non-military property, the request was dismissed and Channel 300 was allotted to San Clemente, as requested. See 2 FCC 2d

647 (1966).

⁵ While Bartholomew contends that Southern California Edison ("SCE") has a 60-year lease on 83 acres of Camp Pendleton and that SCE has verbally indicated that it may be willing to lease tower space, no evidence was presented to document these allegations or to show that a commitment was made. See *supra*, note 1.

⁶ San Clemente will retain local radio service. Additionally, it is served by a multiplicity of reception services. See 8 FCC Rcd at 3127.